



Defendant-Appellant Gustavo Celestino (“Celestino”) appeals from the trial court’s order sentencing Celestino to a term of four years, with three years executed and one year on work release, after Celestino pled guilty to operating a motor vehicle while intoxicated, causing serious bodily injury, with a previous conviction for operating while intoxicated, a Class C felony.

The single issue presented in this appeal is whether the sentence was inappropriate in light of the nature of the offense and the character of the offender.

On November 14, 2006, the Stated charged Celestino with operating a motor vehicle while intoxicated causing serious bodily injury, a Class D felony, operating a motor vehicle with a B.A.C. greater than .08, causing serious bodily injury, a class D felony, operating a motor vehicle while intoxicated causing serious bodily injury with a prior Class C felony, a Class C felony, and operating a motor vehicle with a B.A.C. greater than .08 causing bodily injury with a prior Class C felony, a Class C felony. On February 22, 2007, Celestino pled guilty to the offense of operating a motor vehicle while intoxicated, causing serious bodily injury, with a previous conviction for operating while intoxicated, a Class C felony.

The facts supporting Celestino’s guilty plea established that on November 5, 2006, officers arrived at the scene of an accident involving personal injury. Celestino was behind the wheel of a gray Dodge pickup truck. Medics removed him from the vehicle. Witnesses would have testified that while driving Celestino swerved his truck to avoid two stopped cars and caused a head-on collision with a vehicle driven by the victim. The victim sustained a broken foot from the collision. Celestino smelled of alcohol and

admitted at the hospital to drinking and driving. Celestino submitted to a blood draw which revealed his blood alcohol level to be .32 grams per 100 milliliters of blood.

At Celestino's sentencing hearing on March 6, 2007, the victim testified that at the time of the collision she was pregnant, and that her fifteen-month-old son was a passenger in her vehicle. The pre-sentence investigation report revealed that Celestino was convicted in 2005 of operating a vehicle while intoxicated. For that conviction, Celestino received a one-year sentence with 361 days suspended to probation. Celestino completed his probation for that offense on March 31, 2006. Celestino's driver's license was suspended at the time of the instant offense. Celestino also reported to the pre-sentence investigator that he did not feel that his alcohol use had ever been a problem for him.

The trial court found Celestino's guilty plea was a mitigating circumstance. The trial court found as aggravating circumstances that Celestino had a prior conviction for operating a vehicle while intoxicated and that he had committed the present offense eight months after completing probation for that prior conviction. The trial court sentenced Celestino to four years, with three years executed in the Department of Correction, and one year to be served on work release through Community Corrections with an alcohol monitoring device. The plea agreement provided for a maximum executed sentence of four years. The trial judge explained that the three years executed was to serve as punishment for the severity of the nature of the offense, and that the fourth year was to allow Celestino to transition back into society without consuming alcohol.

Celestino brings this appeal arguing that the four-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

The Indiana Constitution provides courts of appeal, in all criminal cases, "... the power to ... review and revise the sentence imposed." *James v. State*, 868 N.E.2d 543, 546 (Ind. Ct. App. 2007) (quoting Ind. Const. art. VII, § 4). Ind. Appellate Rule 7(B) states that this "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

In the present case, Celestino received the advisory, formerly presumptive, sentence for a Class C felony. *See* Ind. Code §35-50-2-6. The advisory sentence is that which the legislature has deemed an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Therefore, Celestino's sentence is appropriate in light of the nature of the offense.

Turning to the character of the offender, we note that Celestino was convicted in 2005 for operating a motor vehicle while intoxicated, and had successfully completed his probation for that conviction only eight months prior to commission of the instant offense. Celestino reported to the pre-sentence investigator that he did not feel that his consumption of alcohol had ever been a problem for him.

The trial court noted that Celestino's guilty plea was a mitigating circumstance. However, Celestino did receive the benefit of dismissal of the remaining charges by pleading guilty. Celestino's blood alcohol content was four times the legal limit for

operating a motor vehicle. The collision resulting from Celestino's operation of a vehicle while intoxicated easily could have resulted in multiple fatalities.

There is no basis upon which to grant relief based upon the nature of the offense or Celestino's character.

Affirmed.

BAILEY, J., concurs.

ROBB, J., concurring in result.